IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 481 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEVSINH V RAJ & 2 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR YU MALIK for the Appellant.
MR ND GOHIL, APP, for Respondent-State.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 09/10/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. The three appellants before us were the accused before Sessions Court, Kheda, at Nadiad, in Sessions Case No.170 of 1989, which came to be decided on 25th May, 1990. The appellants were tried for the offence of murder of Manjula alias Tiniben, wife of Devsinh Vakhatsinh Raj (accused-appellant No.1), allegedly, committed by them on 23rd June, 1989, between 18.00 and 21.00 hours, at village Bhanpura, Taluka Borsad, District Kheda. The appellants were alleged to have caused harassment and ill-treatment to the deceased and destruction of evidence or murder by throwing the deceased into a well nearby the house. The Trial Court, considering the evidence led by the prosecution, found that the charges levelled against the appellants were duly proved by the prosecution and convicted all the three appellants. The Trial Court convicted appellants-accused No.1 and 2 for offences punishable under Section 302 read with Section 114 of the Indian Penal Code and Section 201 of IPC. They were sentenced to undergo

imprisonment for life and to pay a fine of Rs.250/-, in default thereof, to undergo rigorous imprisonment for ten days, for the offence punishable under Section 302 read with Section 114 of IPC and for the offence punishable under Section 201 of IPC, they were sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.100/ and, in default thereof, to undergo rigorous imprisonment for eight days.

1.1 All the appellants were convicted for offence punishable under Section 498-A read with Section 114 of IPC and were ordered to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.100/-, in default thereof, to undergo rigorous imprisonment for eight days. Aggrieved by the said judgment and order, all the three convicts have preferred this appeal, who are referred to in this judgment as “the appellants”, respectively.

2. We may record that appellant No.3-Kamlaben, wife of Vakhatsinh Jeshinhbhai Raj (appellant No.2) expired during the pendency of this appeal and her appeal, therefore, stands abated.

2.1 It may also be recorded that appellant No.2-Vakhatsinh Jeshsinhbhai Raj, while he was undergoing the sentence, came to be released by grant of remission on account of Mahatma Gandhi Shatabti by the State authority and, accordingly, he has been released from prison. Learned Advocate, Mr. Malik, states that he does not seriously press this appeal so far as appellant No.2 is concerned.

2.2 So far as appellant No.1 is concerned, after the conviction, while the appellant was undergoing sentence, he absconded in the year 1995 and could be restored to prison in the year 2004 and he is, now, undergoing sentence. According to learned Advocate, Mr. Malik, for the appellants, the appeal, therefore, is pressed only for appellant No.1.

3. The facts of the case, in a narrow compass, can be stated thus :-

3.1 Appellants No. 2 and 3 are the father and mother of

appellant No.1. Appellant No.1, around the date of incident, was serving with the Armed Forces and his wife, deceased-Manjulaben alias Tiniben was staying either with the parents of appellant No.1 or with her parents, as per convenience. Appellant No.1, whenever he got leave, used to visit his parents and wife.

3.2 As per the say of the father of the deceased, there were quarrels quite often between the appellants and the deceased and the deceased used to complain about ill-treatment being meted out to her whenever she visited her parental house. A few months before the incident, the deceased had come down to her parental house and was staying with her parents because of ill-treatment being meted out to her and about seven weeks prior to the date of incident. Appellant No.1 went to the house of his in-laws and took away deceased-Manjulaben saying that he has taken a vow of having food after offering prayer at Somnath. Thereafter, they went to the house of the appellants at Bhanpura and were staying there.

3.3 On the day of incident, i.e. 23rd June, 1989, P.W.3-

Kailashben Jenabhai Ramtubhai (Exhibit 17), who was also of village Bhanpura, noticed a quarrel going on in the house of the appellants while she was going to fetch water from a well nearby the house of the appellants. She noticed that appellant No.1 had a shovel in his hand and appellant No.2 had a wooden log in his hand. She could not notice whether appellant No.3 had anything in her hands. She noticed that they were beating the deceased. She says that, she then went to the well and after drawing water, went home. After some time, when she again went to draw water from the well, she noticed that everything had quietened. She, therefore, inquired and was told that the deceased fell into the well. She, therefore, went home. Her husband was not available and she, therefore, went to one Natwarlal Pandya at Bhetasi and requested him to send a message to her uncle, i.e. father of the deceased, and then she went back to her home. When her husband arrived at about 9.00 P.M., she told him that Manjulaben was thrown into the well. Next morning, she learnt that her uncle and others had come during the night. She says that, she did not see the dead body, but learnt that her leg was cut off and hand was broken.

3.4 Father of the deceased, Vajesinh, lodged a First Information Report, on the basis of which, offence was registered and investigated and, ultimately, charge sheet was filed. In the meanwhile, it transpires that an Occurrence Report was registered by Natwarsinh Jeshsinh Raj, brother of accused No.2, at Anklav Police Outpost about Manjulaben having fallen into the well. On the basis of that occurrence report, police had arrived and dead body was removed from the well, Inquest Panchnama was prepared and also Panchnama of the well was prepared by the Head Constable. But later on, since the F. I. R. was lodged, investigation was taken over by Deputy Superintendent of Police and charge sheet was filed.

4.5 Charge sheet was filed in the Court of learned Judicial Magistrate, First Class, at Borsad, who, in turn, committed the case to the Court of Sessions, at Nadiad, and Sessions Case No.170 of 1989 came to be registered. Charges were framed at Exhibit 3, to which the accused persons pleaded not guilty and came to be tried. Upon considering the evidence led by the prosecution, the Trial

Court concluded that the prosecution was successful in establishing the charges and recorded conviction, as stated above.

4. Learned Advocate, Y. U. Malik, for the appellants and learned Additional Public Prosecutor, Mr. Gohil, are heard. The record and proceedings are before us and they have taken us through the record and proceedings during the course of this arguments.

5. Learned Advocate for the appellant, Mr. Malik, contended that the case depends mainly on evidence of Kailashben, which cannot be relied upon. She is a partisan witness and, if her conduct is seen, it is quite unnatural. Mr. Malik submitted that, though she is the first cousin of deceased-Manjulaben, she does not intervene in the quarrel when she noticed that the deceased was being beaten by the appellants. She does not raise any shouts to stop the quarrel, but in a casual manner, goes to the well, draws water and goes to her house. Even on the second trip, when she learns that the deceased had fallen in the well, she raises no shout for help nor does she take any step to ensure that the deceased is

rescued. She goes home and does nothing. She herself has not even seen the dead body. She goes home and goes to sleep till next day. This conduct of this witness is very unnatural and can be given little credence.

5.1 Mr. Malik submitted that the investigation is defective and unreliable. If the deceased died because of haemorrhage, there should have been some marks of the deceased having bled around the place incident. If the left leg of the deceased was chopped off, there would be spurting of blood and would leave traces of blood around the place of incident, but there is no Panchnama which would show presence of blood. According to Mr. Malik, in fact, as per the evidence, the incident occurred in the house of the appellants, but no Panchnama of the house of the appellants is done by the Investigating officer.

5.2 Mr. Malik submitted that the medical evidence is not always to be taken as a gospel truth. The Court has to assess its evidential value in light of surrounding circumstances by applying the tests of commonsense and probability. The medical evidence

in the form of deposition of Dr. Naranbhai Ramjibhai Chaudhary and the Postmortem Notes, if examined, does not rule out the possibility of the deceased having sustained injuries while falling in the well. There were electric motor, iron ladder and iron rods fitted in the well and, if the deceased had fallen in the well because of the fall from a height, these injuries could have been caused.

5.3 Mr. Malik submitted that the prosecution case is not consistent. It is alleged that the appellants had dissatisfaction about the deceased having not conceived despite the lapse of about three years' time after the marriage and, on the other hand, there is a case that appellant No.1 was working with the Armed Force and used to visit whenever he got leave and that the deceased was caused harassment by the in-laws on social front. Mr. Malik submitted in such a situation, where two different stands are taken by the prosecution, the prosecution case should be given close scrutiny before being accepted.

5.4 Mr. Malik submitted that Kailashben claims to have asked one Natwarlal Pandya to inform her uncle. As per the

prosecution, Natwarlal Pandya, himself had not gone to inform Vajesinh, but he deputed two other persons, who, in turn, informed Vajesinh about the incident. Mr. Malik submitted that the prosecution has not examined any one of the two persons, who informed Vajesinh about the incident.

5.5 It was contended by learned Advocate, Mr. Malik, that the Inquest Panchnama and the Panchnama of the place of incident, which were prepared while making an inquiry pursuant to the Occurrence Report, have been relied upon by the prosecution, whereas the Investigating Officer has not made any effort to draw a Panchnama of the place of offence. It also appears that the Inquest Panchnama was drawn in presence of the Head Constable and no effort was made to summon the Executive Magistrate.

5.6 Mr. Malik submitted that the evidence of Manubhai Parbatbhai (Exhibit 25) would show the quality of investigation. Manubhai Parbatbhai was the person who worked as a Panch to the Inquest Panchnama so also the Arrest and Recovery Panchnamas. This witness admits to be working as Sarpanch and to have acted as

Panch in a large number of cases of different nature. The Investigating Agency has, therefore, selected a man who is nothing but a prefessional Panch.

5.7 Mr. Malik submitted that, if the evidence of the prosecution as a whole is seen, it is clear that the investigation is conducted in a very poor manner; that the investigation cannot be considered as independent and unbiased; that the evidence of prosecution witnesses is shaky and unreliable; that the conduct of the witnesses and the manner in which they have reacted throw a doubt into the prosecution story; and that the prosecution story seems to be imaginary, unreliable and fishy. Mr. Malik submitted that the Trial Court erred in overlooking the material defects in the prosecution case while assessing the evidence and in relying on the evidence led by the prosecution. It was submitted by learned Advocate, Mr. Malik, that the Trial Court erred in giving undue weightage to the evidence of Kailashben and in drawing inferences against the accused persons. He, therefore, submitted the benefit of doubt may be given to appellant No.1 by allowing the appeal.

6. Learned Additional Public Prosecutor, Mr. Gohil, has opposed this appeal. According to him, presence of Kailashben is natural and her conduct is also natural. Mr. Gohil submitted that it cannot be overlooked that in the community to which the witness and the accused belong, the lady folk do not move freely in public. The conduct of Kailashben in not intervening is natural because the quarrel was going inside the house and she had no reason to interfere in family affairs of the accused persons. Mr. Gohil submitted that, after learning that the deceased fell in the well, Kailashben made all possible efforts by rushing to village Betasi and informed Mr. Pandya to inform the father of the deceased. She then informs her husband and it transpires that her husband, upon learning about the incident, rushed to the well and remained there with others till next morning. Mr. Gohil, therefore, submitted that, it cannot be said that she has not taken any action or she has acted in an unnatural or strange manner.

6.1 Mr. Gohil submitted that the deceased was the wife of appellant No.1. They were staying together and lastly seen together by Kailashben. Thereafter, death has occurred. The

action on the part of the appellants in lodging the Occurrence Report and not informing the parents of the deceased speaks volumes about their conduct. Mr. Gohil submitted that the investigation may have been conducted weakly, but that by itself would not abrogate the effect of the material which has come on record. In support of this contention, he has relied on decision in the case of *State of U. P. v. Hari Mohan & Ors. AIR 2001 SC 142*. Mr. Gohil, therefore, submitted that the Trial Court has considered all relevant aspects and has recorded conviction which cannot be interfered with and the appeal may be dismissed.

7. We have examined the record and proceedings from the angle suggested by learned Advocate for the appellants.

8. There is no dispute that Manjula alias Tiniben, wife of appellant No.1 has expired within a period of about three years from her marriage with appellant No.1. The question, therefore, whether it is a case of accidental death, suicidal death or homicidal death. In this regard, if the medical evidence is seen, Dr. Naranbhai Ramjibhai, has deposed at Exhibit 15. He is the

doctor who performed postmortem. The Postmortem Notes are at Exhibit 16. According to the medical evidence, the cause of death was shock and haemorrhage due to grievous injury on head and left leg. He had performed the postmortem along with Dr. H. M. Patel on 24th June, 1989. While performing postmortem, he had noticed that the left leg was severed from two inches below knee. Both the bones were fractured and skin was cut off. He had noticed a fracture on right hand just about elbow. There was an injury on head in the occipital region, i.e. a C.L.W. Of the size of 3 cms. x 2 cms. x 2 cms. and fracture of of occipital bone. There was a corresponding internal injury in the head. The doctor opined that the injury on leg was possible with muddamal article No.11-shovel and the injury on right elbow was possible with muddamal article No.12-wooden log. The doctor has been cross-examined at length and he denies the suggestion that the injuries found on leg were possible out a fall on an article like spade. He, however, stated that fracture is possible, but not the injury which was found on leg. He has admitted that the injury on head was possible in a fall, but not the injury on leg.

8.1 A close scrutiny of the Postmortem Notes (Exhibit 16) indicates that the lungs, stomach and the intestines were found to be normal and did not contain any water. The doctor has also deposed that there are major vessels in legs, cut of which would result into profuse bleeding.

8.2 From the above medical evidence, we are of a firm view that the deceased met with a homicidal death. The doctor has opined that she died because of haemorrhage and haemorrhagic shock. The doctor has not opined that she died of drowning and this opinion of the doctor appears to us to be well founded for the reason that, had the deceased had an accidental fall or even suicidal fall, she would have gulped water and would have also inhailed water along with air and there would have been presence of water in her lungs and/or stomach, which was absent. This absence of water rules out the possibility of the deceased having fallen into the well while being alive. Differently put, she had stopped breathing before she fell into the well and, therefore, death by accident or suicide is ruled out and not opined by the doctor and we are inclined to accept the opinion of the doctor for the reasons

stated hereinabove.

8.2.1 The doctor has also opined that the injury found on leg of the deceased, whereby her leg was severed from 2 inches below knee, could not have been caused by a fall from whatever height and, therefore, although we notice from the Panchnama of the well that there were iron ladder and electric motor installed in the well, they could have caused injuries other than the injury on leg. There are major vessels in the leg which were cut off, resulting into profuse bleeding and must have contributed to the cause of death and, therefore, we are confirming the finding of the Trial Court that the decease met with a homicidal death.

8. Now comes the question as to who could have caused the homicidal death. In this regard, the important evidence is of Kailashben (Exhibit 17). She happens to be cousin of the deceased. She has stated in her deposition that she is married to Dilipsinh Chandrasinh and stays in village Bhanpura itself at a distance of about two fields from the house of appellant No.1. The deceased was married to appellant No.1 about three years back and had no

child from the wedlock. She has stated that whenever the deceased met her, she used to talk about the parents-in-law quarrelling with her.

9. The witness has stated that, on the day of incident, at about 6.00 P.M., she was going to the well of Janabhai Motibhai for fetching water. For going to that well, she is required to pass by the house of the appellant. She says that she was all alone and she noticed that all the appellants were quarrelling with deceased-Manjula and were beating her. Appellant No.1 had a shovel in his hand and appellant No.2 had a wooden log in his hand. She is not sure as to whether appellant No.3 had anything in her hand. She says that, then, she went back home with water and when she again went for drawing water, everything was calm and peaceful. At that time, she inquired from appellant No.3 as to what happened to Manjula and she was told that Manjula fell in the well. She says that she felt that those persons must have thrown her into the well and, therefore, she went running to Village Bhetasi and told Natwarlal Pandya to inform her uncle (ie. father of the deceased, who is the first informant). Then she went to her home and when

her husband arrived at about 9.00 P.M., she told him about the incident. She says that she did not see the dead body in the well and when the dead body was removed from the well at about 9.00 A.M., at that time, she saw the dead body. She noticed that the right hand was broken and left leg was chopped off. The witness is cross-examined at length on various aspects. She has replied to the queries on topography of the area. She says that she learnt about arrival of her uncle-Vajesinh in the next morning when the Villagers had gathered. She says that, on the next day, she went to the place, but she had no talk with her uncle. She says that the distance between Bhanpura and Bhatesi is about one mile and i.e. approximately 10 to 12 fields. She says that she went to Bhetasi along the banks of the canal. During cross-examination, she says that, while going to the well from her house, firstly, the house of the appellants comes and, on the day of incident, she noticed Manjula crying and raising shouts, as she was being beaten. She says that despite that she went to the well to fetch water and then went home the same way. She had a talk with Kamlaben (appellant No.3) in the second trip. She denies the suggestion that she had not seen any beating being given to the deceased.

9.1 Vajesinh Ramtubhai is examined at Exhibit 12. He is the father of the deceased and father-in-law of appellant No.1 and uncle of Kailashben. He happens to be the first informant. He says that, two persons had come to him and told him that Manjula was thrown into well by her in-laws after beating. This message was received by him on the day of the incident at about 7.00 to 8.00 P.M. He, therefore, along with about eight persons went to Bhanpura in the tractor of Mukhi. These eight persons were his wife, his younger brothers, their spouses and other relatives. He says that when he went there, police was already present. The well is at a distance of about 10 to 15 feet from the house of the appellants. He says that they reached Bhanpura at about 00.30 hours and they tried to look into the well, but because of darkness, they could notice nothing. The police also waited for the whole night and the dead body was removed on the next morning. Then he goes on to describe the injuries noticed on the dead body. He says that the dead body was sent to Aanklav for postmortem and then he gave the complaint. This witness says that the deceased used to complain about ill-treatment being meted out to her of and

on by the appellants. He has also stated that the deceased was staying at his house about six months prior to the incident because of the family quarrels. He says that on 1.5.1989, appellant No.1 had come to their house and indicated that took a vow for going to Somnath and took Manjula with him and, since then, she was staying with the appellant.

9.2 During cross examination, the witness indicated that Pratappura and Bhanpura are located at a distsance of about 45 kms. from each other. The distance between Bhatesi and Bhanpura is about 1 km. During cross-examination, he says that when he went to Bhanpura from Pratappura, he, firstly, went to the house of the appellants and found that nobody was present in the house. He says that he did not go to the house of Kailashben, but he waited at the well for rest of the night. During cross-examination, some inland letters were shown to him an he said that he cannot say whether the handwritings are of deceased-Manjula. He denies the suggestion that the deceased committed suicide or met with an accidental death.

10. From the evidence Kailsahben and Vajesinh, it transpires that Kailashben saw, in proximity of time and place of the incident, the appellants quarrelling with the deceased, beating her with a spade and a wooden log. There is history of ill-treatment being meted out to her, as is stated by Vajesinh and Kailashben. There is uncontroverted version of Vajesinh that six months prior to the incident, the deceased was staying with him because of the family quarrels and that she was taken away by appellant No.1 on 1.5.1989 on the ground that he had taken a vow to visit Somnath.

10.1 Thus, although there is no direct evidence about the occurrence, there is evidence that just before Kailashben learning about the deceased having fallen into the well, Kailashben saw the appellants beating the deceased. The medical evidence confirms that the injury found on person of the deceased was possible to be caused with muddamal articles No.11 and 12, i.e. spade and wooden log, respectively. Undisputedly, the appellants and the deceased were staying in the same house, at last, since 1st May, 1989, when the deceased was taken away by appellant No.1 from

her parental house. There is no reason to disbelieve the evidence which is led by the prosecution in the form of deposition of Kailashben and Vajesinh. The deceased was lastly in their company. The necessary and only legitimate inference that can be drawn is that the appellants are responsible for death of the deceased.

11. Coupled with the above aspect, the conduct of the appellants is also significant. When Vajesinh goes to their house, none of the appellants was found at the house. Soon after the incident, Kailashben is told by appellant No.3 that the deceased fell into the well. If the fall was accidental or suicidal, the appellants would have raised hue and cry and would have taken some steps to rescue the deceased, but they did not do so. They had not remained at the place thereafter. But it has come in evidence that appellant No.2, went to Aanklav Police Outpost along with his brother Natwarsinh Jeshsinh Raj, who lodged an Occurrence Report, which is at Exhibit 28. It has come in evidence of Sardarsinh Mangalsinh that along with Natwarsinh, appellant No.2 had also gone there. Thus, appellant No.2 is a party to his brother giving an incorrect

information to Police, on the basis of which an accidental death is registered.

11.1 There is yet another aspect which reflect heavily on conduct of the appellants. Appellant No.2 takes pains to go to Aanklav Police Outpost along with his brother for lodging Occurrence Report, but none of the appellants have bothered to inform the parents of the deceased. Appellants No.1 and 3 have left the house after the incident as it is evident from the deposition of Vajesinh that when he went there at night, no one was at home. This also reflects on the conduct to suggest that they had something to hide.

12. It was contended that conduct of Kailashben is suspicious and not natural. Though she noticed her cousin being beaten by the appellants, she does not interfere. She draws water from the well and goes to her house and then in the second trip, in spite of being told that the deceased fell in the well, she takes no steps. It is not possible to accept this contention because from the evidence, it transpires that on learning about the deceased having

fallen in the well, Kailashben rushed to village Bhetasi and requested one Natwarlal Pandya to send a message to her uncle, i.e. the first informant. Then she went home and informed her husband when he returned from his work. Her husband immediately went to the place of occurrence and stayed there for the rest of the night. In the meanwhile, police has also arrived, so also the first informant and, therefore, it cannot be said that the conduct of Kailashben is unnatural.

12.1 It is true that, on the first occasion, when she noticed the deceased being beaten by the appellants, she did not intervene. But if the conduct is examined from the angle of social background to which the parties belong, the status and rights enjoyed by female folk therein, the fact that the witness was all alone, the fact that this was a family affair and which was not uncommon, we do not find the conduct of the witness to be unnatural. There is no reason not to accept the version of the witness only because she did not intervene or raise alarm.

13. It is true that the Investigating officer has not acted in a

satisfactory manner, but a defect in investigation or a lapse will not be fatal to the prosecution unless it is found that it goes to the root of the prosecution case. It was very seriously and vehemently argued by learned Advocate for the appellants that, as per the prosecution case, the incident occurred in the house of the appellants, but the investigating agency has not drawn any Panchnama of that place of incident. It was contended that, if the deceased died of shock due to haemorrhage and if the major vessels of the leg were chopped off, there would have been profuse bleeding around the place where the incident occurred, but there is total absence of evidence about what was found in the house as no Panchnama is drawn. We also feel that non-drawing of Panchnama of house of the appellants has eliminated the possibility of assessing what was the position in the house where Kailashben saw the appellants beating the deceased. Since there is no such evidence, we proceed on a premise that there may not be any blood marks at the house of the appellants. But the question that requires consideration is whether non-availability of this evidence would abrogate the effect of other evidence led by the prosecution. The other evidence, though circumstantial, is strong enough to connect

the appellants with the crime. The answer to that question, therefore, would be an emphatic no. Non-drawing of Panchnama of the house of the accused would not result into a missing link. If Panchnama was drawn and blood stains were found, that may have added strength to the prosecution case, but absence of that evidence does not weaken the prosecution case as the other evidence is otherwise found trustworthy. The appellants and the deceased, in company of each other, were lastly seen by Kailashben in proximity of time and place of incident. There is total inaction on the part of the appellants in trying to rescue the deceased from the well is significant. Their absence from the place of incident soon after the incident is also significant. Appellant No.2 goes along with his brother to lodge Occurrence Report, but none of the appellants tried to inform the parents of the deceased about the incident. All these factors complete a chain of circumstances to connect the appellants with the crime and, in our opinion, therefore, the defect in investigation is of no benefit to the appellants and of no consequence detrimental to the prosecution. In this regard, we may place reliance on the decision in the case of ***State of U. P. v. Hari Mohan & Ors., A.I.R. 2001 SC 142***, where

it has been held that, if the other evidence led by the prosecution is found to be reliable and trustworthy, lapse in investigation will not be fatal to the prosecution.

14. It was also indicated that the Investigating Agency has relied on the Inquest Panchnama and the Panchnama of place of ofence drawn during the inquiry of accidental death. We do not find any reason for suspecting anything in this regard. It is true that the F. I. R. is lodged at about 2.00 P.M. on the next day, but it cannot be overlooked that the entire situation that was created was that the first informant was waiting at the place of the incident since 00.30 hours in the night. The police was also waiting pursuant to the Occurrence Report and the dead body was taken out in the morning. Obviously, the proceedings were going on pursuant to the Occurrence Report and a laymen would not know as to what is to be done and, on the Investigating Officer coming, the F. I. R. is taken. It has come in evidence of Kailashben that, though she went to the place of incident in the morning, she had no talk with the first informant. Under the circumstances, late lodging of F. I. R. also is of no significance, so also the reliance

being placed on the Inquest Panchnama and the Panchnama of the well. We may once again follow the principle laid down in case of *State of U. P. v. Hari Mohan & Ors. (supra)*. With this fact-situation in the instant case, we are of the view that there is no merit in the appeal and the appeal must fail.

15. The evidence regarding ill-treatment meted out to the deceased and the deceased complaining of the same to her father and and P.W.3-Kailashben and the evidence of father of the deceased that the deceased had come to her parental home following family grounds about six months prior to the incident all go to prove the offence punishable under Section 498-A read with Section 114 of I. P. C.

15.1 The fact that the dead body was thrown into the well after she died and the fact that the appellants are found to be involved in the murder of the deceased go to prove the charge punishable under Section 201 of I. P. C.

15.2 We, therefore, confirm the conviction for offence

punishable under Section 498-A read with Section 114 of I. P. C. and Section 201 read with Section 114 of I. P. C.

16. In the result, the appeal in respect of appellant No.1 is dismissed and the judgment and order of conviction and sentence of the Trial Court in the case of appellant No.1 is confirmed. So far as the appeal of appellant No.2 is concerned, the same is not pressed as appellant No.2 has already undergone the sentence. The appeal in respect of the appellant No.3 is abated as the said appellant expired during pendency of the appeal.

[A. L. DAVE, J.]

[BANKIM N. MEHTA, J.]

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